

March 5, 1999

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**DECISION ON APPLICATION FOR PRELIMINARY PLAT APPROVAL**

SUBJECT: Department of Development and Environmental Services File No. **L98P0021**

**HERITAGE HILLS**  
Preliminary Plat Application

Location: West of 132nd Avenue SE, approximately 330 feet south of SE 288th Street

Property Owners:	Ron Scott	Jack Shaw
	9840 Carr Road	335 Henderson Road
	Renton, WA 98055	Chelan, WA 98016

Applicant: Polygon Northwest Company, *represented by* Robert Johns, Attorney At Law  
701 Fifth Avenue #3600, Seattle, WA 98104

**SUMMARY OF RECOMMENDATIONS:**

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to conditions (modified)
Examiner's Decision:	Approve, subject to conditions (modified)

**PRELIMINARY MATTERS:**

Application or petition submitted:	June 16, 1998
Complete application:	July 14, 1998

**EXAMINER PROCEEDINGS:**

Motion for Dismissal or Continuance Denied:	February 25, 1999
Hearing Opened:	February 25, 1999
Hearing Closed:	February 25, 1999

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

## ISSUES/TOPICS ADDRESSED:

- Surface Water Drainage
- Ornamental Ponds
- Eminent Domain
- Condemnation
- Ownership

## ORDER ON MOTION FOR DISMISSAL OR CONTINUANCE:

At the opening of the hearing, the Auburn School District moved for dismissal or continuance of the application pending resolution of condemnation proceedings initiated by Auburn School District #408 in the Superior Court for King County. The parties were provided an opportunity to enter documentary evidence, testimony and make oral argument on the motion. Having considered the motion, and having determined that ownership of the subject property has not been transferred to the Auburn School District, the motion is DENIED.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

## FINDINGS:

## 1. General Information:

Owners:	Ron Scott 9840 Carr Road Renton, WA 98055	Jack Shaw 335 Henderson Road Chelan, WA 98816
Developer:	Polygon Northwest Company 4030 Lake Washington Blvd South, Kirkland, WA 98033	
Engineer:	Barghausen Consulting Engineers, Inc. 18215 – 72 <sup>nd</sup> Avenue South, Kent, WA 98032	
Location:	West of 132 <sup>nd</sup> Avenue Southeast, approximately 330 feet south of 228 <sup>th</sup> Street	
STR:	NE 04-21-05	
Zoning:	R-4/R-1	
Acreage:	22.55	
Number of Lots:	80	
Density:	4 dwelling units per acre	
Typical Lot Size:	7,337 square feet	
Proposed Use:	Single family residential	
Sewage Disposal:	Soos Creek Sewer District	
Water Supply:	Water District #111	
Fire District:	Fire District #44	
School District:	Auburn School District #408	
Complete Application Date:	July 14, 1998	

2. Except as modified below, the facts set forth in the King County Land Use Services Division's Preliminary Report to the King County Hearing Examiner for the February 25, 1999 public hearing are found to be correct and are incorporated herein by this reference.
3. The Applicant's downstream analysis and the review thereof by King County DDES indicates that ponds located downstream from the subject property (one on the property of Douglas Peterson and one on the property of Kelly Hutchison) will not experience any change in their hydrology as a result of the proposed development.
4. The traffic analysis and evidence presented at the hearing indicate that the intersection of 132<sup>nd</sup> Avenue SE and SE 288<sup>th</sup> Street currently functions at level of service "C," and will continue to function at that level of service with traffic from the proposed development.
5. The testimony offered at the public hearing confirms that 132<sup>nd</sup> Avenue SE is a principal arterial. The Applicant has agreed to provide frontage improvements at the subject property consistent with King County Road Standards for a principal arterial.

**CONCLUSIONS:**

1. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the King County Comprehensive Plan, Subdivision and Zoning Codes, and other official land use controls and policies of King County.
2. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare and for open spaces, for drainage ways, streets, other public ways, transit stops, potable water supply, sanitary wastes, parks and recreations, playgrounds, schools and school grounds, and safe walking conditions for students who only walk to school; and it will serve the public use and interest.
3. The conditions for final plat approval recommended below are in the public interest and are reasonable requirements to mitigate the impacts of this development upon the environment.
4. The dedications of land or easements within and adjacent to the proposed plat, as required by the conditions for final plat approval or as shown on the proposed preliminary plat submitted by the applicant, are reasonable and necessary as a direct result of the development of this proposed plat, and have been agreed to by the applicant.

**DECISION:**

APPROVE the preliminary plat of Heritage Hills, as revised and received December 18, 1998, SUBJECT to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.

3. The plat shall comply with the base density and minimum density requirements of the R-4 and R-1 zones classification. All lots shall meet the minimum dimensional requirements of the R-4 and R-1 zones classification and shall be generally as shown on the face of the approved preliminary plat, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. The applicant must obtain final approval from the King County Health Department.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards, established and adopted by Ordinance No. 11187.
6. The applicant must obtain the approval of the King County Fire Protection Engineer, regarding the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.
7. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) shall also be satisfied during the engineering and final plat review.
  - a. Drainage plans and analysis shall comply with the 1990 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
  - b. Current standard plan notes and ESC notes, as established by LUSD Engineering Review, shall be shown on the engineering plans.
  - c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # \_\_\_\_\_ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with the plans on file."
8. The following conditions specifically address drainage issues for this particular plat:
  - a. The stormwater detention for this site shall be computed using SCS-based hydrograph method (or other method approved by DDES). The performance of the facility shall meet the release rate of 70% of the pre-developed 2-year/24-hour design storm event. The volume of the facility shall be for the 100-year/24-hour storm event. This detention release rate is according to the Soos Creek Basin Plan, Soosette Sub-basin.

- b. The french drain located along the west property line and the southerly portion of the site shall be evaluated at engineering plan submittal. The drain shall be reconstructed if any defects in capacity or function are found. At a minimum, cleanouts shall be added if the existing drain is to remain. A private drainage easement shall be shown on the engineering plans and the final plat for the french drain.

As an option, the detention for this site may be calculated using the Level 2 Flow Control Standard, and the KCRTS method described in the 1998 SWDM.

- 9. The following road improvements are required for this subdivision to be improved according to the 1993 King County Road Standards:
  - a. Road A shall be improved to the urban neighborhood collector standard. That portion of Road A adjoining the north property boundary may be improved to the half street standard. A Road Variance #L98V0118 was approved for intersection spacing at the Road A connection to 132<sup>nd</sup> Avenue Southeast.
  - b. Road B shall be improved to the urban sub-collector street standard.
  - c. Road C shall be improved to the urban sub-access street standard.
  - d. Roads D, E, and F shall be improved to the urban minor access street standard.
  - e. FRONTAGE: The frontage of the site along 132<sup>nd</sup> Avenue SE (west side only) shall be improved to the urban principal arterial standard.
  - f. Tracts F, G and H shall be designed and improved as private access tracts per Section 2.09 of the King County Road Standards. Tract F shall be extended to serve Lots 33 and 35 ( This should eliminate the need for tract J). Lots 32 through 36 shall have undivided ownership of Tract F and be responsible for its maintenance. Lots 23, 24, and 34 shall have undivided ownership of tract G and be responsible for its maintenance. Lots 77 and 78 shall have ownership of Tract H and be responsible for its maintenance.
  - g. Tract I shall be designed and improved as a joint use driveway per Section 3.01 of the King County Road Standards. Lots 64 and 65 shall have undivided ownership of Tract I and be responsible for its maintenance.
  - h. Modifications to the above road conditions may be considered by King County, pursuant to variance procedures in KCRS 1.08.
  - i. There shall be no direct vehicular access to or from Road A from those lots that abut it.
  - j. There shall be no direct vehicular access to or from 132<sup>nd</sup> Avenue SE from those lots that abut it.
- 10. Twenty feet of additional right-of-way for 132nd Avenue shall be dedicated along the east property line, allowing for fifty feet of right-of-way from centerline.

11. The easement for the private road (existing driveway) shall be relinquished. Supporting documentation for abandoning this easement shall be submitted at engineering plan submittal.
12. The location of the existing well shall be shown on the engineering plans. The engineering plans shall address abandoning the well pursuant to requirements outlined in the Washington Administrative Code (WAC 173-160). The water easement shall be properly relinquished prior to the recording of the plat.
13. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council, prior to final plat recording.
14. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
15. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE  
AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/ sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

16. The proposed subdivision shall comply with the sensitive areas requirements as outlined in KCC 21A.24. Permanent survey marking, and signs as specified in KCC 21A.24.160 shall

also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.

17. Preliminary plat review has identified the following issues which apply to this project. All other applicable requirements for sensitive areas shall also be addressed by the applicant:
  - a. Three Class III wetland are present on the southeast corner of the site. Wetland B and C are located within the Tract C south of Road B. Wetland A is located within a tract (no label) north of Road B. A 25 foot-wide buffer shall be provided from these wetlands, per KCC 21A.24.320A.
  - b. Buffer averaging has been proposed and may be permitted, subject to compliance with the provisions of KCC 21A.24.320B, as determined by LUSD.
  - c. Drainage facilities directly discharging to the wetland areas from individual lots or other sources shall be constructed and installed outside of the buffer areas. Wetland hydrology shall not be altered unless approved by LUSD. A wetland hydrologic analysis shall be required during the engineering review.
18. The proposed recreation facilities are consistent with the recreation space requirements of KCC 21A.14.180 and KCC 21A.14.190. The following shall be provided:
  - a. An overall conceptual recreation space plan shall be submitted for review and approval by DDES, with the submittal of the engineering plans. This plan shall include location, area calculations, dimensions, and general improvements. The approved engineering plans shall be consistent with the overall conceptual plan.
  - b. A detailed recreation space plan (i.e., landscape specs, equipment specs, etc.) consistent with the overall conceptual plan, as detailed in item a., shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of the final plat documents.
  - c. Tract K, a pedestrian access shall be improved per King County Road Standards Section 3.08. The ultimate location of this tract shall be coordinated with the Parks and the Open Space Office to allow for a suitable connection to the future park site.
  - d. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
19. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation and/or open space area(s).
20. Street trees shall be provided along Road A and 132<sup>nd</sup> Avenue SE as follows:
  - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.

- b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation (KCDOT) determines that trees should not be located in the street right-of-way.
- c. If KCDOT determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
- d. The trees shall be owned and maintained by the abutting lot owners or the homeowners' association or other workable organization, unless the County has adopted a maintenance program. This shall be noted on the face of the final recorded plat.
- e. The species of trees shall be approved by DDES and KCDOT if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
- f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval. KCDOT shall also review the street tree plan if the street trees will be located within the right-of-way.
- g. The applicant shall contact Metro Service Planning at 684-1622 to determine if 132<sup>nd</sup> Avenue Southeast is on a bus route. If 132<sup>nd</sup> Avenue Southeast is a bus route, the street tree plan shall also be reviewed by Metro.
- h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

A \$538 landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.

- 21. Clearing and grading activities on the site shall conform with Special Overlay District requirement SC-P3. Building envelopes or clearing restrictions shall appear on the final engineering plans.
- 22. The following conditions have been established under SEPA authority as necessary to mitigate the adverse environmental impacts of this development. The applicant shall demonstrate compliance with these items prior to final approval:

The Washington State Department of Transportation (WSDOT) has indicated that this project will pose a probable significant adverse environmental impact to SR 516 and SR 18 unless mitigated. The applicant and WSDOT shall entered into a legal agreement that requires full mitigation payment in the amount of \$ 7, 280.00 which constitute this project's contribution to roadway improvements in



SR 18 and SR 516 corridors. This contribution shall be paid in full prior to recording of the plat. Receipt of payment will result in the project being deemed mitigated by WSDOT.

23. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty (50%) percent of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.

ORDERED this 5<sup>th</sup> day of March, 1999.

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James N. O'Connor  
King County Hearing Examiner

TRANSMITTED this 5<sup>th</sup> day of March, 1998, to the parties and interested persons shown on the attached listed.

#### NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) **on or before March 19, 1999**. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council **on or before March 26, 1999**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

**MINUTES OF THE FEBRUARY 25, 1999 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L98P0021 - HERITAGE HILLS:**

James N. O'Connor was the hearing examiner in this matter. Participating in the hearing were Fereshteh Dehkordi, Bruce Whittaker, Robert Johns, Gary Young, Hal Grubb, Mike Witek, and Kelly Hutchison.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 Department of Development and Environmental Services File No. L98P0021
- Exhibit No. 2 Department of Development and Environmental Services Preliminary Report to the Hearing Examiner for the February 25, 1999 Public Hearing
- Exhibit No. 3 Application dated June 16, 1998
- Exhibit No. 4 Environmental Checklist dated May 21, 1998
- Exhibit No. 5 Mitigated Declaration of Non-Significance dated January 13, 1999
- Exhibit No. 6 Affidavit of Posting indicating July 23, 1998 as date of posting and July 24, 1998 as date affidavit was received by Department of Development and Environmental Services
- Exhibit No. 7 Site Plan dated December 18, 1998
- Exhibit No. 8 Assessor's Maps SW 34-22-5, NE 4-21-5, and 3-21-5
- Exhibit No. 9 Level One Drainage Report by Barghausen Consulting Engineers dated May 6, 1998
- Exhibit No. 10 Wetland Evaluation and Delineation Report by Habitat Technologies dated June 10, 1998
- Exhibit No. 11 Buffer Enhancement report dated October 2, 1998 and revised December 8, 1998
- Exhibit No. 12 Traffic Report by the Transpo Group dated October 7, 1998
- Exhibit No. 13 DDES Staff New Recommended Condition No. 23
- Exhibit No. 14 Copy of Eminent Domain Petition
- Exhibit No. 15 Copy of Lis Pendens
- Exhibit No. 16 Copy of Order Adjudicating Public Use
- Exhibit No. 17 Copy of Stipulated Order for Immediate Use and Possession
- Exhibit No. 18 Photo of Peterson ornamental pond submitted by Bruce Whittaker

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